



**DEPARTMENT OF THE ARMY**  
 U.S. ARMY ENGINEER DISTRICT, LOUISVILLE  
 CORPS OF ENGINEERS  
 REGULATORY DIVISION  
 MITIGATION, COMPLIANCE, AND ENFORCEMENT BRANCH  
 6855 STATE ROAD 66  
 NEWBURGH, INDIANA 47630  
 November 1, 2017

Regulatory Division  
 ID No. LRL-2013-00444-GJD

**RECEIVED**  
 11-6-17

Mrs. Ann Nelson  
 Peabody Energy  
 United Mineral Company, LLC  
 566 Dickeyville Road  
 Lynnville, IN 47619

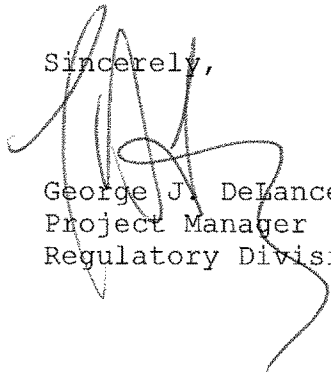
Dear Mrs. Nelson:

This letter is in reference to your application and the subsequent Public Notice for Department of the Army (DA) authorization to discharge fill and/or dredged material into "waters of the United States" on the proposed United Minerals Company, LLC. High Point Mine, located northwest of Boonville, Warrick County, Indiana.

Enclosed for your information is a copy of comment letters received in response to the Public Notice. These letters are being forwarded to you so that you can review any specific concerns they raised. If you feel that any concerns or comments are based on a misunderstanding, or that it can be resolved to the satisfaction of you both, you may wish to contact the commenter's directly with this office's participation and/or advise this office directly.

Please provide a written response to this notification within 30 days of receipt of this letter to outlining how you would like to proceed with addressing these comments. If you have any questions regarding the requested information, please contact this office by writing to the above address, ATTN: CELRL-RD-MCE or by calling me at (812) 842-2807.

Sincerely,

  
 George J. DeLancey  
 Project Manager  
 Regulatory Division

Enclosure

Copy Furnished to:

DeLancey/RD-MCE

10/14/2018



Indiana Department  
of Natural Resources

Eric Holcomb, Governor  
Cameron F. Clark, Director

Division of Reclamation  
14619 W. State Road 48  
Jasonville, IN 47438-7056  
October 13, 2017

U.S. Army Corps of Engineers  
Louisville District  
Attn: Mr. George DeLancey  
6855 State Road 66  
Newburgh, IN 47630



Re: Indiana Dept. of Natural Resources  
Archaeology Comments  
Public Notice Number LRL-2013-444b-gjd  
Surface Mining Permit #S-374

Dear Mr. DeLancey:

The Indiana Department of Natural Resources has reviewed the plans associated with Public Notice Number LRL\_2013-444b-gjd submitted by United Minerals Company, LLC for a Department of the Army (DA) Permit, subject to Section 404 of the Clean Water Act. It has been determined that the program instituted by the Indiana Surface Coal Mine Reclamation Act (I-SMCRA) meets all statutory requirements incumbent on the Office of Surface Mining, U.S. Department of Interior, and addresses all provisions of the National Historic Preservation Act and other national legislation and directives regarding treatment of cultural resources. The purpose of the project, as stated on the public notice document is to facilitate the removal of subsurface coal materials.

Prior to any mining related disturbance, a coal mine seeking a permit under the provisions of the Indiana Surface Coal Mine Reclamation Act (I-SMCRA) is required to identify all cultural resources located within the proposed permit boundaries and within a 1,000 foot buffer around those boundaries. All known cultural resources within the proposed permit boundaries are then addressed through the following process:

1. All cultural resources are documented in a manner and by personnel that satisfy all requirements of 312 IAC 21-3 and IC 14-34.
2. All documented resources are evaluated against criteria established by the US Department of the Interior in 36 CFR 60.6.
3. For all sites or properties determined eligible or potentially eligible for listing on the state and/or federal register, a plan consistent with the objectives of historic preservation law is implemented in order to mitigate adverse effects to such resources.
4. Avoidance of potentially significant sites as a mitigation plan is common. This results in isolated "no mining windows" within SMCRA permit boundaries.

10/13/2017  
Page 2 of 2

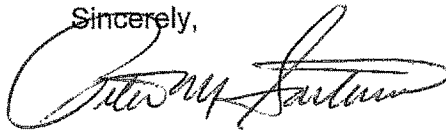
These steps may be undertaken in segments after the general permit is issued but, bond cannot be accepted and no mining or mining related disturbance can be permitted in any area of the proposed mine until all steps in this process have been completed.

The area contained within this request for a Department of the Army Permit, subject to Section 404 of the Clean Water Act is within an area currently permitted in accordance with the Indiana Surface Mining Act, IC 14-34, and any area to be impacted either has been or will require clearance prior to such impact. As a result, any issues related to specific archaeological, prehistoric, or historic sites or structures which might be affected by the proposed work either have already been or will be resolved as a result of the coal mine permitting and bonding process under IC 14-34.

Additionally, any area which is subject to the Section 404 of the Clean Water Act and is to be utilized for mitigation or other purposes that is contained within this proposed Section 404 permit and that is not intended to be permitted and affected in accordance with the Indiana Surface Mining Act, IC 14-34, must undergo review prior to disturbance to determine if archaeological, prehistoric, or historic sites or structures might be affected by the proposed work.

Thank you for the opportunity to comment on this proposed permit. Should you have any questions, please feel free to contact me at (812) 665-2207 or [psartoris@dnr.in.gov](mailto:psartoris@dnr.in.gov).

Sincerely,



Peter M. Sartoris  
Assistant Director, Technical Services  
Division of Reclamation

Cc: J-file  
Reclamation Specialist  
Tim Wright, Staff Archaeologist



## United States Department of the Interior Fish and Wildlife Service



Indiana Field Office (ES)  
620 South Walker Street  
Bloomington, IN 47403-2121  
Phone: (812) 334-4261 Fax: (812) 334-4273

October 18, 2017

RECEIVED  
11-6-17

Mr. George DeLancey  
U.S. Army Corps of Engineers  
CELRL-RD-MCE  
6855 W State Road 66  
Newburgh, IN 47630

Dear Mr. DeLancey:

The U.S. Fish and Wildlife Service (FWS) has reviewed Public Notice #2013-444b, concerning an application by United Minerals Company, LLC for a Department of Army permit, pursuant to Section 404 of the Clean Water Act. The application is for stream and wetland impacts associated with a coal mining operation in Warrick County, Indiana.

These comments are consistent with the Fish and Wildlife Coordination Act (16 U.S.C. 661 et. seq.), the National Environmental Policy Act of 1969, the Endangered Species Act of 1973, the U. S. Fish and Wildlife Service's Mitigation Policy, and the Indiana Coal Mining Regulatory Program, Section 310 IAC 12-3-107.

According to the public notice the proposed permit area covers 3,085 acres. The proposed water resource impacts include 85,700 feet of stream channel (53,824 feet ephemeral, 29,777 feet intermittent, and 2,099 feet perennial), approximately 24.5 acres of wetlands (1.63 forested, 21.18 emergent, and 1.69 scrub shrub), and 93 acres of open water.

### Wildlife Habitat

The site contains a large upland forest block of about 800 acres in the central portion, known as Big Ditney Hill. This area is of high natural quality, with a diverse mixture of hardwood species, many large trees, a mostly native and open understory, and rugged topography. As such, the permit area provides good habitat for many species of migratory birds and other forest wildlife.

There are multiple records of Indiana bats and northern long-eared bats near the permit area (within 2.5 miles) and it contains abundant summer habitat to support Indiana bat reproductive colonies. The proposed mining activity would temporarily or permanently eliminate approximately 687 acres of summer habitat for this species and restored forest will not become suitable habitat for many years. We recommend the following permit conditions to preserve,

restore and enhance wildlife habitat in the permit area.

1. Minimize surface mining disturbance in Big Ditney Hill, possibly by the use of auger mining. This forest is of good quality and the last natural woodlot in the immediate area.
2. Minimize disturbance of woodlots and forested stream corridors for non-extraction activities.
3. Restore all intermittent and perennial stream networks and their riparian corridors in lengths similar to the pre-mining condition. Restore a network of forested ephemeral drainageways adequate to contain surface stable water flows.
4. Restore all pre-mining forest and wildlife habitat, using native tree and shrub species beneficial for wildlife.
5. Minimize wetland impacts. Unavoidable impacts should be mitigated in the post-mining plan.

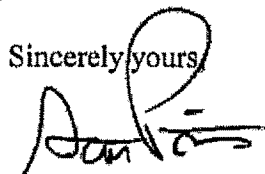
#### Endangered Species

The proposed project is within the range of the federally endangered Indiana bat (*Myotis sodalis*), sheepnose mussel (*Plethobasus cyphus*), and federally threatened northern long-eared bat (*M. septentrionalis*). The sheepnose mussel is restricted to the Ohio River and will not be impacted by the proposed mining operation.

As stated previously, there is known summer habitat for Indiana and northern long-eared bats present throughout the permit area, and the proposed mining operation will eliminate a significant amount of habitat for these species. In accordance with our national biological opinion issued to the Office of Surface Mining, United Minerals Company submitted a revised Indiana Bat and Northern Long-eared Bat Protection and Enhancement Plan (PEP) outlining measures to minimize take of listed bats. The FWS has not completed the review of the revised PEP. Section 7 coordination will not be complete until such time that we review and approve the revised PEP.

For further discussion, please contact Marissa Reed at (812) 334-4261 ext. 215 or [marissa\\_reed@fws.gov](mailto:marissa_reed@fws.gov).

Sincerely yours,



Scott E. Pruitt  
Field Supervisor

cc: Kelsey Pearman, IDNR Division of Reclamation, Jasonville, IN  
Andrea Schaller, US EPA, Chicago, IL



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
 REGION 5  
 77 WEST JACKSON BOULEVARD  
 CHICAGO, IL 60604-3590

OCT 19 2017

REPLY TO THE ATTENTION OF:

WW-16J

RECEIVED  
 11-6-17

Ms. Lee Anne Devine  
 Regulatory Chief  
 U.S. Army Corps of Engineers  
 Louisville District  
 P.O. Box 59  
 Louisville, KY 40201-0059

Subject: Public Notice LRL-2013-0444b-gjd; High Point Mine, United Minerals Company, LLC,  
 Warrick County, Indiana

Dear Ms. Devine:

The U.S. Environmental Protection Agency has reviewed the above referenced Public Notice issued on September 19, 2017 and the revised Clean Water Act (CWA) Section 404 permit application for the proposed surface coal mine in Warrick County, Indiana. Under the revised preferred alternative, United Minerals, LLC (applicant) proposes to impact 85,700 linear feet of streams, 24.5 acres of wetland, and 93 acres of open water. This revision would impact a majority of the 3,084.6-acre site, and stream impacts would increase by 26,353 linear feet.

A copy of EPA's previous comments on this project, dated September 9, 2014, is attached (Attachment 1). Also attached is EPA's April 14, 2016 letter on the adjacent Seven Hills Mine which specifically references this proposed mine (Attachment 2).

The CWA Section 404(b)(1) Guidelines (Guidelines) provide the substantive environmental criteria against which this Section 404 permit application must be evaluated. Based on our review of the public notice and associated permit application materials, the applicant has not demonstrated compliance with several aspects of the Guidelines. These concerns are described in detail below.

#### Alternatives Analysis

Fundamental to the Guidelines is the premise that no discharge of dredged or fill material may be permitted if a practicable alternative to the proposed discharge exists that would have a less adverse impact on the aquatic environment.<sup>1</sup> For non-water dependent activities, there is a rebuttable presumption that less damaging practicable alternatives exist.

<sup>1</sup> 40 CFR Part 230.10(a)





### *Offsite Alternatives*

The applicant did not discuss offsite alternatives within this application; however, in other pending applications before the Corps, the applicant did discuss the reserves remaining in the Illinois Coal Basin. In its application for the Seven Hills Mine, the applicant highlighted that 17 billion tons of recoverable coal remain in Indiana and 130 billion tons occur within the Illinois Coal Basin, which includes Indiana coal. The applicant needs to consider and discuss offsite alternatives. For example, United Minerals should provide a comparative evaluation of the environmental impacts associated with offsite alternatives within the same coal basin that would meet the basic project purpose and entail recovery from other coal reserves and holdings that it owns or that could reasonably be obtained through a parent company or other contractual relationships.

### *Onsite Alternatives*

On the impact table that begins on page 28 of this revised proposal, the applicant lists the impacts to waters as either “mine support,” “mine through,” or “avoid,” while the operations map only identifies the “avoidance area.” On page 15, United Minerals states “[i]mpacts to the previously mined areas will mainly consist of mine infrastructure such as, but not limited to, haulage roads, drainage control structures, temporary coal stock piles areas, spoil fill, spoil and soil storage piles and stream/wetland mitigation.” We recommend that the impact table be updated with the details of impacts referenced in the text. Additionally, we recommend the operations map provided within the Corps Public Notice be revised to provide details on the proposed impacts. Once a detailed operations map and updated impact table is provided, a careful review of the proposed impacts may yield opportunities for additional minimization of impacts.

The revised application reduces some direct impacts by relocating the stockpiling and preparation of the coal to the nearby Wild Boar mine. EPA is supportive of efforts to utilize existing support facilities as a way to minimize impacts on the proposed project site. However, the applicant’s revised proposal increases overall direct mining impacts to waters of the United States. The revisions include impacts to natural areas and streams that were avoided in the original application. The applicant has not provided justification for the impacts of previously avoided waters, included information in the application to explain why the change in mining was necessary nor discussed why the previous mine proposal is no longer practicable.

In and the revised application, the same phrasing is used to describe the proposed revised alternative as was used to describe the original proposed alternative: “There essentially are no practicable or economical alternatives to the proposed surface mining method of coal extraction.” The revision only adds the phrase “utilizing the dragline method.” This caveat on the type of surface coal mining does not change the underlying rationale for surface coal mining, and no discussion has been provided in the revised application describing any other type of surface coal mining method. On page 15 the applicant states that “[a] dragline will be employed to efficiently remove the overburden.” However, there are no changes made to section D which describe the “preferred action,” and both narratives utilize this statement to support the applicant’s preferred alternative:

*As stated previously, there are no legitimate alternatives to the surface mining method of coal removal for the reserve. The only alternative would be to cease plans for mining, resulting in the loss of high paying jobs, important tax revenue, ancillary economic growth, financial losses on investment to United Minerals Company, LLC and potential interruptions to the coal supply necessary for basic electricity production in the state of Indiana and surrounding states. It*

*should be noted that, mining returns the land to a natural state as opposed to other land uses such as commercial developments, housing developments, etc.*

Under the Guidelines, an alternative is considered to be practicable if it is capable of being done after consideration of cost and technology. The applicant did not address why its original submittal is no longer feasible and why it was not addressed as an alternative. As revised, the application includes more direct impacts to waters of the United States than did the original application, and the applicant has not addressed EPA's concerns related to the analysis of practicable alternatives. EPA believes that the applicant has not demonstrated that the revised application represents the least damaging practicable alternative.

### Cumulative Impacts

The applicant does not discuss the extent of historic, contemporaneous and future mining impacts in the watershed. The applicant should discuss these cumulative mining impacts. In addition to the applicant's other proposed mines in the watershed, there is a proposal to expand the Liberty Mine south. Considering the latest revision, pending proposals, and foreseeable impacts, approximately 103 square miles of the Highland-Pigeon Creek watershed are affected.

| Mining Activity in Indiana Portion of Highland-Pigeon (HUC 8) Watershed                  | Acres          | Square Miles |
|--|----------------|--------------|
| Actively removing overburden and/or coal extraction                                      | 26,856         | 42           |
| Overburden removal and coal extraction complete  | 7,308          | 11           |
| Permit bonded - no overburden removal or coal extracted                                  | 4,899          | 8            |
| Temporary cessation of operations  | 10             | ~0           |
| Reclaimed Mines  | 23,135         | 36           |
| Reasonably Foreseeable Mines (Seven Hills Complex and Liberty South Expansion) estimates | ~4,000         | ~6           |
| <b>Total</b>   | <b>~66,208</b> | <b>~103</b>  |

### Mitigation and Monitoring

Compensatory mitigation is intended only for unavoidable impacts to waters after the least environmentally damaging practicable alternative has been determined. While the project has not yet met the sequencing requirements of the 404(b)(1) Guidelines, we are providing preliminary comments on the proposed compensatory mitigation.

The applicant has provided a mitigation plan which includes a monitoring and sampling plan based on physical, chemical, and biological performance standards. For some stream impacts the proposed mitigation is 0.5:1. EPA recommends that mitigation for direct stream impacts be calculated based on a ratio not less than a 1:1.

The applicant has not considered or proposed to compensate for the secondary, cumulative, and temporal effects of this project on the immediate and greater watershed. As such, the mitigation plan does not comply with the 404(b)(1) Guidelines.<sup>2</sup> The mitigation plan should address all impacts, including secondary and temporal impacts.

<sup>2</sup> 40 C.F.R. 230.94(c)

The applicant does not propose financial assurances for its proposed mitigation. SMCRA's required bonds do not equate to the financial assurance required in a CWA Section 404 context and provide a long-term management strategy/plan for mitigation areas. The applicant should include financial assurances which are specific to the successful completion of the mitigation proposed in accordance with appropriate mitigation standards<sup>3</sup>

The proposed monitoring plan included with the draft permit is insufficient. The monitoring program for this project should include biological, chemical, and physical assessments throughout mining operations, including: 1) prior to the initiation of mining activities to establish baseline conditions; 2) during mining operations to assist in determining potential impacts to aquatic habitat and water quality downstream impacts; and 3) for a minimum of five years after the completion of stream restoration and site reclamation activities at the mine site where appropriate to determine mitigation success. Only groundwater monitoring, per SMCRA requirements, is proposed throughout the duration of mining operations. Stream monitoring location should also be required every 500 feet as originally proposed in the application.

In summary, the High Point Mine, as proposed, does not comply with the 404(b)(1) Guidelines. Please notify us of any response to these comments and any changes to the permit application. We appreciate the opportunity to provide comments on this Public Notice. Please contact Andrea Schaller (312) 886-0746 with any questions regarding this letter.

Sincerely,



Peter Swenson, Chief  
Watersheds and Wetlands Branch

Attachment 1 - EPA's September 9, 2014 Letter

Attachment 2 - EPA's April 14, 2016 Letter

cc: Michael Ricketts, USACE – Louisville (via email)  
George DeLancey, USACE - Louisville (via email)  
Jason Randolph, IDEM (via email)  
Scott Pruitt, USFWS – Bloomington (via email)  
Marisa Reed, USFWS – Bloomington (via email)

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<sup>3</sup> 40 CFR 230.93(n)





UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
 REGION 5  
 77 WEST JACKSON BOULEVARD  
 CHICAGO, IL 60604-3590

REPLY TO THE ATTENTION OF:

WW-16J

SEP 09 2014

Colonel Christopher G. Beck  
 District Engineer  
 U.S. Army Corps of Engineers  
 Louisville District  
 P.O. Box 59  
 Louisville, KY 40201-0059

Subject: Public Notice LRL-2013-0444-rjb; High Point Mine, United Minerals Company, LLC, Warrick County, Indiana

Dear Colonel Beck:

The U.S. Environmental Protection Agency has reviewed the above referenced Public Notice issued on August 8, 2014, and the related Clean Water Act (CWA) Section 404 permit application for the proposed surface coal mine in Warrick County, Indiana. Under the preferred alternative, the applicant proposes to impact 59,347 linear feet of jurisdictional streams and 45.72 acres of jurisdictional wetlands for the construction of the 3084.6-acre High Point Mine. The proposed High Point Mine is located between the previously permitted Liberty Mine and pending Seven Hills Mine. The property boundary for all three mines is largely within the Pigeon Creek watershed.

Based on the information contained in the Public Notice, Section 404 permit application materials, and additional project information provided by the U. S. Army Corps of Engineers (Corps), EPA finds that this project may have substantial and unacceptable adverse impacts to Pigeon Creek, its floodplain and its watershed.

*Environmental Impact Statement*

Section 102(2)(C) of NEPA identifies major federal actions that "significantly" affect the quality of the human environment requiring an environmental impact statement (EIS). "Significantly" under NEPA regulations is defined by two criteria: context, and intensity of impacts of the proposed project.<sup>1</sup> "Context" refers to the affected environment in which a proposed action would occur, and "intensity" means the degree to which the proposed action would minimally include one or more of the factors listed below. As proposed, the High Point Mine appears to exceed thresholds for significance based on the context and intensity of the project. For the following reasons, EPA strongly recommends that the Corps consider an EIS for this project:

<sup>1</sup> 40 C.F.R. § 1507.27

- **Cumulative Impacts:** As stated above, the High Point Mine will be located between the permitted Liberty Mine and the pending Seven Hills Mine. These mining activities would likely lead to impacts that are cumulatively significant. The cumulative impacts from the High Point Mine and other permitted and proposed mines could significantly impact human health and the environment, and would be grounds for the preparation of an EIS.
- **Public Health or Safety:** The proposed mine may raise environmental justice concerns. Nearby communities could be disproportionately impacted by the proposed mine given that the proposed mine would be located between two proposed and operating mines, further exacerbating existing exposures to sensitive populations. Nearby communities may be exposed to multiple mine-related impacts, including fugitive dust, noise, and water discharge. The potential for public health and safety risks will be increased, creating the necessity for an EIS to be prepared.<sup>2</sup>
- **Threatened and Endangered Species:** The proposed High Point Mine is within the range of the Federally Endangered Indiana bat (*Myotis sodalis*) and proposed endangered northern long-eared bat (*Myotis septentrionalis*). According to a U.S. Fish and Wildlife Service (USFWS) letter dated August 26, 2014, there are multiple records of both species within 2.5 miles of the project area. The proposed area contains abundant summer habitat that supports Indiana bat reproductive colonies. The proposed mining activity would temporarily or permanently eliminate approximately 545 acres of Indiana bat summer habitat.

As stated in previous correspondence and reiterated above, EPA believes the proposed project should be analyzed in conjunction with other similarly proposed projects in the area, including the pending Seven Hills Mine. The operation of these mines relies on shared infrastructure, including the preparation plant. This qualifies the permitting of these mines as connected actions, which should be analyzed in one NEPA document.

If a formal EIS is not required, the applicant will still need to complete a thorough cumulative impacts analysis as required under the CWA Section 404(b)(1) Guidelines (Guidelines).<sup>3</sup> This analysis should consider both environmental justice concerns and endangered species.

### **Cumulative Impacts**

In order to fully analyze the past, present, and reasonable foreseeable impacts as required under the National Environmental Policy Act (NEPA) and the Guidelines, the applicant should prepare a cumulative impacts analysis that details the changes in hydrology, drainage patterns, and channel composition in the watershed. Impact assessments for wetlands should include direct and secondary impacts from previous and current actions, as well as impacts from future actions as a result of changes in surface and groundwater hydrology.

A CWA Section 404 permit was issued for the nearby Liberty Mine, LRL-2010-218-gjd, in April 2012. The Liberty Mine permit authorized impacts to 20,343 feet of streams and 99.4 acres of wetlands just to the south and east of the proposed High Point mine; there is currently a request to modify the Liberty Mine permit to impact an additional 5,035 linear feet of streams, 34 acres of wetlands and 30 acres of open water. The preliminary proposal for the Seven Hill's Mine, just west of the proposed High Point

<sup>2</sup> 40 C.F.R. § 1507.27(b)(2)

<sup>3</sup> 40 C.F.R. § 230.11(g)

Mine, would impact approximately 458.2 acres of wetlands and 31,762 linear feet of streams. These three adjacent mines would cumulatively impact over 100,000 linear feet of streams and 600 acres of wetlands. The vast majority of impacts from these three mines will occur within the Pigeon Creek watershed in northwestern Warrick County. While the Liberty Mine has already been permitted, the proposed High Point Mine and Seven Hills Mine should be considered a single permitted project since both are owned by United Minerals Company, appear to be at similar stages of development in the permitting process, and the preparation plant serving both operations would be constructed on the High Point site.

In an August 26, 2014 letter to the U.S. Army Corps of Engineers Newburgh Field Office, USFWS noted the permit area contains high quality natural habitat, including good habitat for many species of migratory birds and other forest wildlife, and contains a diverse mixture of hardwood species. EPA considers Pigeon Creek, its tributaries, and its forested floodplain wetlands to be valuable resources which provide unique, high quality natural habitat, support endangered species, and serve significant biological functions. We agree with USFWS that the area possesses special ecological characteristics of productivity, habitat, and wildlife protection, which are important and easily disrupted ecological values. Except as provided under Section 404(b)(2), no discharge of dredged or fill material shall be permitted which will cause or contribute to significant degradation of the waters of the United States. Based on the quantity of impacts to quality resources, as well as the extent of cumulative impacts of mining on the Pigeon Creek watershed, EPA believes the project, as proposed, will result in significant degradation of waters of the United States.<sup>4</sup>

#### *Avoidance and Minimization*

The Guidelines require that the applicant demonstrates there are no practicable alternatives available that would have a less adverse impact on the aquatic environment for non-water dependent activities. The Guidelines presume that less damaging upland alternatives are available for these activities. In the 404 application, the applicant stated that it examined potential avoidance and minimization opportunities, but no detailed information regarding this effort was provided. EPA requests the applicant provide more detailed information (i.e. maps and narrative) which details and supports its avoidance and minimization efforts under the preferred alternative. Specific information detailing the areas of the project that overlap with other proposed mining projects (i.e. Seven Hills) in relation to the location of avoided areas is needed. The additional information on avoidance and minimization is necessary for the Agencies to determine compliance with the Guidelines.

#### *Mitigation and Monitoring*

The applicant has provided a mitigation plan, which includes a monitoring and sampling plan based on physical, chemical, and biological performance standards. EPA believes that the amount of mitigation proposed to compensate for direct impacts is consistent with other approved projects in the area; however it fails to consider and compensate for the secondary, cumulative, and temporal effects of this project on the immediate and greater watershed. With the two abutting mines in the same watershed, it is imperative to take connectivity into account when designing mitigation. As such, the mitigation plan as currently stated does not appear to comply with the 404(b)(1) Guidelines.<sup>5</sup> The following must be considered in the mitigation plan:

<sup>4</sup> 40 C.F.R. § 230.10(c)

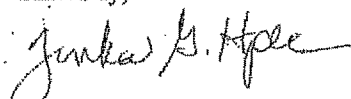
<sup>5</sup> 40 C.F.R. 230.94(c)

- The mitigation plan should evaluate the full range of impacts considered under the 404(b)(1) Guidelines, including secondary and temporal impacts.
- Financial assurance is stated as being provided under their SMCRA permit. The applicant needs to address financial assurances in a CWA Section 404 context and provide a long-term management strategy/plan for mitigation areas.
- The proposed monitoring plan included with the draft permit is insufficient. The monitoring program for this project must require biological, chemical, and physical assessments throughout mining operations, including: 1) prior to the initiation of mining activities to establish baseline conditions; 2) during mining operations to assist in determining potential impacts to aquatic habitat and water quality downstream impacts; and 3) for a minimum of five years after the completion of stream restoration and site reclamation activities at the mine site where appropriate to determine mitigation success. Only groundwater monitoring, per SMCRA requirements, is proposed throughout the duration of mining operations.

In summary, EPA believes the High Point Mine, as proposed, may have substantial and unacceptable adverse impacts on Pigeon Creek, its tributaries and its forested floodplain wetlands. EPA objects to the project as proposed because it does not comply with the 404(b)(1) Guidelines. An EIS should be considered for this project, in concert with the pending Seven Hills project.

Please notify us of any response to these comments and any changes to the permit application. We appreciate the opportunity to provide comments on this Public Notice. Please contact Holly Arrigoni (312-886-0995) with any questions regarding this letter.

Sincerely,



Tinka G. Hyde, Director  
Water Division

Enclosure

cc: Robert Brown, USACE - Louisville (via email)  
David Carr, IDEM  
Scott Pruitt, USFWS - Bloomington  
Ramona Briggeman, IDNR Division of Reclamation, Jasonville, IN